

News Release



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Labor Department Sues Alabama Firm and Plan Officials Over Delinquent Employee Contributions

ATLANTA—The U. S. Department of Labor has sued Smith Advanced Technology, Inc., in Huntsville, Ala., its owner and trustees of the 401(k) plan for failing to transmit \$35,738 in employee contributions to the company's 401(k) plan and instead using the contributions to pay corporate expenses and creditors.

The lawsuit, filed on Nov. 14, 2003, in federal district court in Birmingham, alleges that the company's owner, Bill G. Smith, and trustees Jerry Peevy, Bart Smith and Glen D. West violated the Employee Retirement Income Security Act (ERISA) by failing to remit employee contributions to the plan at various times between June 1, 2001, and March 31, 2002. The suit also alleges that the defendants did not hold the plan's assets in trust.

The department is seeking a court order to require that the defendants restore all losses owed to the plan with interest, agree to offset of their individual plan accounts and re-distribute those assets to the remaining plan participants and permanently bar them from serving any plan governed by ERISA in the future.

Smith Advanced Technology was a software provider to cable and utility companies and sponsored the plan for 31 participants. The 401(k) has \$685,949 in assets at the end of 2000.

Employers with similar problems, who are not yet the subject of an investigation by EBSA, may be eligible to participate in the Department's Voluntary Fiduciary Correction Program (VFCP). Participation in the VFCP requires employers to make workers whole but allows them to avoid EBSA enforcement actions and civil penalties as well as any applicable excise taxes.

"The VFCP gives plan sponsors a way to come into compliance with ERISA by restoring workers' benefits while avoiding an investigation by EBSA," said Howard Marsh, Atlanta regional office director of the Employee Benefits Security Administration. "It protects workers' health and retirement benefits and allows us to focus our resources on those who seek to avoid compliance." For more information about the VFCP see www.dol.gov/ebsa.

This case was investigated by EBSA's regional office in Atlanta. Employers and workers can reach EBSA at (404) 562-2156 or EBSA's toll free number, **1-866-444-3272**, for help with any problems relating to private-sector pension and health plans.

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(Chao v. Smith Advanced Technology, Inc.)
Civil Action No. 5:03 CV 3064